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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

4 v.

18 CR 684 (VM)
Conference

5 CHRISTIAN FIGALLO and KENYATTA
6 TAISTE

7 Defendants

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8 New York, N.Y.
9 November 16, 2018
3:30 p.m.

10 Before:

11 HON. VICTOR MARRERO

District Judge

12
13 APPEARANCES

14 GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

15 CECILIA VOGEL

16 Assistant United States Attorney

17 COHEN & FORMAN LLP

Attorney for Defendant Figallo

18 DAVID J. COHEN

19 ZACHARY MARGULIS-OHNUMA LAW OFFICE

Attorney for Defendant Taiste

20 ZACHARY MARGULIS-OHNUMA

21 VICTORIA MEDLEY

1 (In open court)

2 THE COURT: This is a proceeding in the matter of
3 United States v. Figallo and others, Docket No. 18 CR 684.

4 Counsel, please enter your appearances for the record.

5 MS. VOGEL: Good afternoon, your Honor.

6 Cecelia Vogel for the government.

7 MR. COHEN: David Cohen, 950 Third Avenue, New York,
8 New York, for Mr. Figallo.

9 Good afternoon, sir.

10 THE COURT: Good afternoon.

11 MR. MARGULIS-OHNUMA: Zachary Margulis-Ohnuma, 260
12 Madison Avenue, joined at counsel table by my associate
13 Victoria Medley, and we represent Kenyatta Taiste who is seated
14 between us.

15 Good afternoon, your Honor.

16 MS. MEDLEY: Good afternoon.

17 THE COURT: Good afternoon.

18 This is the initial appearance by defendants before
19 this Court following their arraignment on the underlying
20 instrument.

21 Ms. Vogel, would you bring the Court up to date on
22 what has transpired since the appearance and arraignment of the
23 defendants, any scheduling of discovery, and discussions with
24 the parties.

25 MS. VOGEL: Yes, your Honor.

1 So the defendants were arraigned on the day of their
2 arrest on October 2 on this indictment. The government intends
3 to produce the bulk of the discovery by Tuesday. We had hoped
4 to have it today for the parties, but there were some technical
5 issues in terms of getting it on a disk. And so I have been
6 told by my colleague, Jessica Greenwood, who is handling this
7 case, that we will be able to overnight that Monday to the
8 parties. That's the bulk of the discovery.

9 There is some additional discovery that primarily
10 includes the defendants' phones which are still being
11 processed. So, for that we request an additional three to four
12 weeks because it is simply not ready, and I don't know in this
13 case exactly what the reason for the delay is, but I know there
14 were search warrants done in this case, and it is not uncommon
15 that if phones have a password on them, depending on the type
16 of phone, it could take quite a bit of time to get into the
17 phone and to create that discovery for the parties. So that's
18 the government's plan with respect to discovery.

19 And my understanding is that not all parties are in
20 agreement as to the timeline of when we should come back. My
21 understanding is that counsel for one of the defendants is
22 looking for a shorter date to come back.

23 I also would like to alert the Court that the
24 government continues to investigate in this case, and there may
25 be a superseder which would perhaps expand the scope of the

1 time period of the conspiracy and the narcotics involved.

2 THE COURT: All right. Thank you.

3 Mr. Cohen, anything you wish to say on behalf of your
4 client?

5 MR. COHEN: Thank you, your Honor.

6 Your Honor, I was not the original attorney who was
7 there on upon my client's arrest or arraignment. We were
8 hoping to put together a bond package for Mr. Figallo. I've
9 spoken with Ms. Greenwood about that. That would be our
10 request. I'm not sure if your Honor would entertain that or
11 send it to a magistrate in order to entertain a potential bond
12 package.

13 I just received in court today the protective order
14 that I was going to review and hopefully get back to the
15 government in short order. And for now, sir, that's all I need
16 to put on the record.

17 THE COURT: With respect to the bail package, it is
18 this Court's practice to refer those to the magistrate court in
19 the first instance. So whenever you are ready to proceed, just
20 appear before the magistrate on that.

21 MR. COHEN: Will do, sir.

22 THE COURT: Mr. Cohen, you heard what Ms. Vogel
23 indicated concerning the discovery schedule. Assuming that
24 discovery is produced on the time schedule indicated by
25 Ms. Vogel, how much time would you and your colleagues require

1 in order to review and be prepared to schedule the next
2 conference?

3 MR. COHEN: I would imagine three to four weeks. If
4 we get it towards the middle or end of December, we would ask
5 for towards the end of January for the opportunity to then
6 schedule thereafter. So I would say about no more than four
7 weeks to review discovery, Depending obviously on the size of
8 it, but I think four weeks should be fine.

9 THE COURT: Thank you.

10 Mr. Margulis-Ohnuma.

11 MR. MARGULIS-OHNUMA: Yes, your Honor.

12 I am on behalf of Ms. Taiste very concerned about the
13 pace at which this case is proceeding. We objected to the
14 stopping of the speedy trial clock for this interval. She was
15 arrested on October 3. She has been incarcerated that whole
16 time.

17 I have been pestering Ms. Greenwood for discovery.
18 I'm now told Ms. Greenwood is no longer on the case, and she
19 promised us discovery a couple weeks ago, actually, and that
20 came and went.

21 So I'm very concerned. I honestly think that the
22 Court should revisit its decision with respect to the exclusion
23 of speedy trial time. I don't see that there is any basis for
24 it. It seems like the government is using it to continue to
25 investigate by trying to break into the phones. And I was just

1 informed today that there may be a superseding indictment
2 coming.

3 So we would object to any exclusion of speedy trial
4 time. If they are going to get us discovery on Tuesday, I
5 mean, we would need a couple of weeks to look at it. So that
6 would be excludable, but I don't see why this is taking so
7 long. The defendant -- we did make a bail application as well
8 that we ended up ultimately withdrawing because it was
9 vigorously opposed by the government, who in fact explicitly
10 warned us if it was granted, would appeal to this Court. And
11 the defendant, my client, Ms. Taiste, is a transitioning
12 transsexual who finds herself in an all-male environment where
13 her health and safety is at risk every single day, not to
14 mention her mental health and the other problems of being in
15 prison.

16 So we are very eager to move this case along as
17 quickly and possible and would not consent to any speedy trial
18 time. Other than that, of course, the schedule as proposed is
19 fine, but we think the speedy trial clock needs to keep
20 running.

21 THE COURT: Thank you.

22 Ms. Vogel.

23 MS. VOGEL: Your Honor, if I could just address a few
24 things. Currently, Ms. Greenwood is still on the case. She
25 will be shortly going on leave, but as of right now she is

1 still the AUSA handling the case, just to make that clear.

2 With respect to the delay in discovery, my
3 understanding from speaking with her, the drive where the
4 discovery had been kept had failed recently or at some point
5 during this past month, and law enforcement had to really go
6 and re-collect the discovery and re-compile it, and that was
7 part of the reason for the delay.

8 And she has assured me that she has it ready now, and
9 that the issue was it was too large to put on a disk and
10 required IT's help and simply could not get it done in the time
11 frame.

12 In addition, there is this protective order which was
13 shared with the parties today, which as soon as that's approved
14 we will submit to your Honor, as some of the records include
15 personal identifying information, and that's the reason for the
16 protective order.

17 I do think it sounds like the parties are in agreement
18 as to the proposed discovery schedule that I've just set forth
19 and to come back for a conference once the parties have had a
20 chance to review that discovery and at that point address
21 motions and any timing in terms of speedy trial time and the
22 trial date that should be set.

23 THE COURT: Where do you think you might be, let's
24 say, two weeks from today, Ms. Vogel, in terms of whatever
25 additional discovery you still need?

1 MS. VOGEL: Ms. Greenwood informed me that she needs
2 three to four weeks with respect to these phones. I don't have
3 further details on why that is, what the technical issue is
4 here that is causing the delay.

5 If your Honor orders two weeks, we will do our very
6 best to make that happen, but that was the time frame that she
7 thought was needed in order to produce that additional
8 discovery. But I will note that the discovery that we can
9 produce and send overnight Monday to counsel is the bulk of
10 discovery in the case that we have.

11 THE COURT: Why don't we suggest, Ms. Vogel, that the
12 government bring the Court and the parties up to date in two
13 weeks as to where you are and whether or not it might be
14 possible to get the telephone accessed by then. If it is not,
15 then indicate why not. Perhaps at that point we can grant an
16 additional extension as necessary.

17 MS. VOGEL: That's fine, your Honor. Thank you.

18 Just to clarify. If at that point we are not able or
19 it looks like we need some more time, is that a letter that I
20 would submit to the Court and the parties?

21 THE COURT: Yes.

22 MS. VOGEL: Thank you.

23 THE COURT: In the meantime, let's look for a date
24 roughly 30 days out for a follow-up conference. Perhaps by
25 then the defendants will have had enough time to review the

1 discovery that they will receive by Monday, plus if the
2 government is able within two weeks to get the additional phone
3 discovery, perhaps by the following two weeks, the additional
4 two weeks, defendants may be ready to conduct a follow-up
5 conference and indicate whether there is a basis for motion
6 practice or to commence a discussion towards the possibility of
7 a disposition. All right. Four weeks out?

8 DEPUTY CLERK: December 14 at 4:45.

9 MR. MARGULIS-OHNUMA: I have a sentencing in this
10 building at 3:00, but I think that should work out just fine.

11 MR. COHEN: I'm sorry. I have an interview with my
12 child's school on that same day between 2:30 and 4:30. I could
13 do much earlier in the date or late, late in the day.

14 DEPUTY CLERK: December 14 at 1:00.

15 MR. COHEN: That works.

16 MR. MARGULIS-OHNUMA: Yes, that's good. Thank you.

17 THE COURT: Ms. Vogel, is there a motion on that
18 schedule?

19 MS. VOGEL: Yes, your Honor. I request to exclude
20 time until that next conference date on December 14.

21 MR. MARGULIS-OHNUMA: We would object to that for the
22 reasons previously stated on the record.

23 THE COURT: Ms. Vogel, the reasons for the request?

24 MS. VOGEL: Yes, your Honor. It's to allow -- at this
25 point we will be producing the bulk of the discovery to the

1 parties, and it will allow the parties -- allow defense counsel
2 to review discovery and decide whether to make any motions
3 based on what they have received. In addition, to possibly
4 begin any discussions regarding a disposition in this case.

5 THE COURT: Thank you.

6 Mr. Margulis-Ohnuma has raised an objection.
7 Mr. Cohen?

8 MR. COHEN: We don't have an objection, your Honor.

9 THE COURT: Thank you.

10 On the government's motion to exclude adjourned time
11 from speedy trial calculations from today through December 14,
12 one defendant expresses objection, the other one does not. The
13 motion is granted. I find that the reasons conveyed to the
14 Court warrant this exclusion of time as it is intended to
15 ensure the effectiveness of counsel and prevent any miscarriage
16 of justice.

17 The Court is satisfied that the ends of justice served
18 by the granting of this continuance outweigh the best interest
19 of the public and the defendants in a speedy trial. This order
20 of exclusion of time is entered pursuant to the provisions of
21 the Speedy Trial Act, Title 18 U.S.C. Sections
22 3161(h)(7)(B)(ii) and (iv).

23 If there is nothing else, I thank you. Have a good
24 day and a good weekend.

25 (Adjourned)